IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9240 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 9240 of 1993

MR KL PANDYA ASSTT GOVERNMENT PLEADER for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/08/2003

ORAL JUDGEMENT

Heard learned AGP Mr.K.L.Pandya on behalf of the petitioner and learned advocate Mr.Biren Vaishnav for learned advocate Mr.Kishor V. Gadhiya for respondent

workman.

In the present petition, the petitioner has challenged the award passed by the Labour Court, Kalol in Reference LCK [Demand] No.9 / 1988 dated 10th January, 1992, wherein the labour court, Kalol has granted benefit of promotion to the respondent workman Shri Chandrakant Bhatiya from the date on which Shri Khengarbhai Desai came to be promoted on the post of Storekeeper with direction to pay arrears.

This Court has issued Rule on 23rd September, 1993 and also granted interim relief in terms of Para-7[B]. Learned AGP Mr.K.L.Pandya submitted that the labour court is not having jurisdiction to decide the dispute between the parties. He also submitted that labour court has committed gross error in granting promotion to the respondent workman. The third contention raised the learned AGP Mr. Pandya that there was delay in raising the industrial dispute by the respondent workman. Barring these three contentions, no other contention has been raised by the learned AGP Mr.Pandya on behalf of the petitioner before this Court.

As against these three contentions, learned advocate Mr.Vaishnav submitted that the present petitioner has not raised any of the contentions before the labour court because they had not filed any reply. Not only that the petitioner had not led any oral evidence before the labour court, Kalol. But only in cross examination of the workman was held and except that there is nothing on record pointed out by the petitioner before the labour Court and no such contention was ever raised before the labour court. Therefore, he submitted that in absence of any such contentions, the labour court has rightly made observations in para-10 & 11 and granted relief as claimed by the respondent workman.

I have considered submissions made by the learned advocates for the parties. The respondent workman Shri Chandrakant Bhatiya has filed statement of claim and as such, no written statement has been filed by the present petitioner before the labour court. The observations made by the labour court in para-3 that inspite of the various notices served on the petitioner to file written statement but no written statement has been filed though the Advocate remained present before the labour court and therefore, in absence of such contrary evidence on record, the matter was proceeded further and vide Exh.13 evidence of the workman was recorded and the workman came to be cross examined by the petitioner. Thereafter, no

oral evidence has been produced by the petitioner and no documentary evidenced were produced on record and therefore, ultimately request was made by the petitioner after pretty long time to examine the witness which came to be rejected by the labour court. Therefore, during pendency of the Reference, on behalf of the respondent workman vide Exh.15 request was made to direct the petitioner to produce certain documents but even though the same was not replied with by the petitioner and ultimately the labour court has directed to the petitioner to produce certain documents which were demanded by the respondent workman. Thereafter, the labour court has considered oral evidence of the respondent workman and he was working as Store Clerk and in the year 1969, one post of Storekeeper was fallen vacant in Mehsana Division Office and though the respondent was holding the requisite qualification for the post in question and sufficient senior employee in the seniority, no promotion was given to the respondent workman. According to the workman, there was policy of the petitioner that promotion would be given on the post of Storekeeper from the cadre of Storeclerks on seniority basis but despite this, promotion was not given to the respondent workman and ultimately, one Shri Khengarbhai Desai was promoted by the petitioner and he was transferred at Palanpur. Thereafter, again the post in question was fallen vacant and upon application made by the respondent workman, no promotion was given to the workman but on that occasion one Shri Deepakbhai Dudhani came to be promoted on the post of Storekeeper. Thereafter, even on third occasion also, one Shri Satishbhai Bhojak was promoted in the post of Storekeeper. It is appreciatd by the labour court that this Satishbhai Bhojak was admittedly junior to the respondent workman and the respondent workman was not promoted for the period from 1981-86 but monetary benefits were paid but since no promotion was given to the respondent workman when the juniors were promoted by the petitioner. So far as the contention raised by the learned AGP Mr.Pandya that the tribunal was having jurisdiction and the labour court had no jurisdiction is concerned, this aspect has been examined by the labour court. While replying this contention, it is observed by the labour court that when the dispute was raised, at that time, the respondent workman was working as the Workcharge Clerk and it was not disputed by the petitioner before the Conciliation Officer about belated claim of the workman. Ultimately, the labour court has examined the merits of the matter and in absence of the written statement as well as no oral evidence produced by the petitioner and also not produced the documentary

evidence and therefore, the labour court has believed the oral evidence of the respondent workman and the documents and ultimately, come to the conclusion that while considering Purshis Exh.20 wherein demand [2] & [3] came to be withdrawn by the respondent workman and the labour court has granted promotion as per the demand [1] in favour of the respondent workman from the date on which said Khengarbhai Desai was promoted with directions to the petitioner to pay arrears of salary.

I have perused the entire award passed by the labour court and consider the observations made by the labour court and discussion, according to my opinion, when there was no reply from the petitioner and no documentary evidence produced by the petitioner to make out their case as to how the respondent workman was not entitled to promotion on the post in question, so also, in absence of the oral evidence, in such circumstances, the labour court as well as this Court having no other option but not to believe the say of the petitioner and that has been rightly done by the labour court. It is necessary to note taht even petitioner has not approached the Labour Court, Kalol after award with application to set aside exparte award. The petitioner has not produced any documents to show that as per the Rules the respondent is not entitled to promotion. No materials produced by the petitioner before this Court. Even no such efforts made before the Labuor Cuort. For that, the labour court has not committed any error while passing the award in question and the same requires no interference of this Court while exercising the powers under Article 227 of the Constitution. Therefore, there is no substance in the present petition and the same requires to be rejected and it is rejected accordingly.

In the result, the present petition does not succeed and the same is rejected accordingly.

Rule discharged with no order as to costs.

Interim relief, if any, stands vacated.

Date : 4.8.2003 [H.K.Rathod, J.]

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